PERFECT OIL RESOURCES (SABAH) SDN BHD
v. LEE YEE WUEN & ORS

HIGH COURT SABAH & SARAWAK, SANDAKAN
CELESTINA STUEL GALID J
[SUIT NO: SDK-22NCVC-12-6-2020]
10 FEBRUARY 2022

Abstract – *A litigant has a right to be heard, but that right is not absolute, in that, where the litigant was shown to have no regard to an order issued against him, in this case, an injunction order, then his right to be heard was forfeited or postponed until he has purged his contempt. However, case laws have shown that there are exceptions to this rule, where the court does not take a rigid position 'that a person in contempt should not be heard'.*

CIVIL PROCEDURE: *Contempt of court – Committal proceedings – Application for stay of inter partes hearing pending disposal of application for leave to appeal – Whether contempt purged – Reliance on decision of Shamala Sathiyaseelan v. Dr Jeyaganesh C Mogarajah & Anor – Whether person in contempt could be heard before contempt purged*

CIVIL PROCEDURE: *Affidavits – Defects – Affidavits sworn outside jurisdiction – Absence of notarial certificate accompanying affidavit – Whether technical defect – Whether curable – Whether caused miscarriage of justice or prejudicial effect – Whether affidavits could be responded to – Whether defect fatal – Rules of Court 2012, O. 1A & O. 41 r. 12*

CIVIL PROCEDURE: *Stay of proceedings – Application for – Failure to comply with injunction order – Committal proceedings – Application for stay of inter partes hearing pending disposal of application for leave to appeal – Whether leave application and appeal would be rendered nugatory if stay not granted – Whether balance of convenience tilted in favour of granting of stay*

The applicant and the second respondent were set up by one Lee Poh Sin ('deceased'), who was survived by his wife and two children, the first respondent and a son, Lee Kai Wuen ('LKW'). Both the first respondent and LKW were shareholders of the applicant and the second respondent at the material time. They were also directors of the second respondent whereas LKW was also a director of the applicant. The applicant sued the second respondent to claim that it had 'unfettered' use of the access road running through the land which was registered in the second respondent's name ('second respondent's land'). According to the applicant, it had been using the road since before the second respondent's land was acquired with the

consent of its previous owner. The deceased had, in his lifetime, bought the second respondent's land, *inter alia,* to allow the applicant unfettered use of the said road and the applicant had continued to do so until August 2019 when the second respondent, through the first respondent, prevented, obstructed or prohibited the applicant from doing so. The applicant claimed that the second respondent's refusal to allow the applicant access to the said road caused it to suffer loss and damages. On 4 September 2020, the court granted the applicant an injunction order, *inter alia*, prohibiting the defendant from denying the plaintiff's right of unfettered access to use the said access road. *Vide* encl. 80, the applicant applied for leave for an order of committal against the second respondent and the first respondent as its director and the managing director for non-compliance of the injunction order namely for allegedly refusing to permit the applicant unfettered use of the said road without any reasons or sufficient reasons at all and for allegedly interfering with the applicant's use of the same. The applicant's *ex parte* application ('leave order') was granted by the court. However, the leave order was set aside pursuant to the respondents' application in encl. 103. The applicant appealed against the decision and the appeal was allowed by the Court of Appeal allowed. On 6 August 2021, the respondents filed a notice of motion for leave to appeal to the Federal Court. On 23 August 2021, the respondent filed encl. 152 *ie*, an application for the hearing of the *inter partes* committal proceedings under encl. 96 made by the applicant pursuant to the leave granted by this court be stayed pending the disposal of the respondents' notice of motion for leave to appeal to the Federal Court. In opposing encl. 152, the applicant raised the following preliminary issues: (i) whether the respondents were not to be heard until and unless they have purged their contempt; and (ii) the respondents' affidavits (encls. 153 and 165) which were sworn outside of jurisdiction were in breach of O. 41 r. 12 of the Rules of Court 2012 ('ROC') as they had failed to produce proof of seal or signature of the notary public before whom the affidavits were affirmed.

Held (allowing encl. 152 with costs in cause):

(1) In *Shamala Sathiyaseelan v. Dr Jeyaganesh C Mogarajah & Anor* ('*Shamala*'), Richard Malanjum CJSS (as he then was) having considered *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal*, held that the court did not adopt a 'rigid position' that a person in contempt should not be heard. Although *Shamala*'s case was decided on its own facts, it was not the case that the court was bound not to hear the alleged contemnor merely or solely on the ground that he or she had not purged his or her contempt. The court did take note that the Court of Appeal had reversed this court's decision on encl. 103, however, that was the whole premise of the stay application, *ie*, the respondents were seeking leave to appeal to the Federal Court in respect of that decision. In

addition, there is no grounds of judgment from the Court of Appeal available as at the hearing of encl. 152, it was not immediately apparent if this court's reliance on the statement of Richard Malanjum CJSS's clear statement of the law in its decision on encl. 103 was the error that was said to have been appealable. (paras 25, 28 & 30)

(2) In *Gartner Research & Advisory (Malaysia) Sdn Bhd v. Industrial Court Of Malaysia & Anor*, the court held that the absence of a notarial certificate accompanying the affidavit when it was filed and served as a technical defect which was curable under O. 1A of the ROC. Further, the court also had regard to O. 2 r. 3. In this case, there is no allegation of any miscarriage of justice or prejudicial effect on the applicant, the objection that the respondents' affidavits, sworn outside of the jurisdiction, were in breach of O. 41 r. 12 of the ROC as they failed to produce proof of seal or signature of the notary public before whom the affidavits were affirmed, was not sustainable. The fact that the applicant was able to respond to the said affidavits meant that such defects, as alleged, could not be said to be fatal. (paras 31, 33 & 34)

(3) If the respondents' leave application before the Federal Court was allowed and the appeal was further allowed by the Federal Court, it would be rendered nugatory if the stay was not granted. The scope of the injunction order, *ie*, whether it included the right of third parties to use the access road, which was also raised by the applicant to contend that they would be prejudiced by the grant of the stay, was the tilting point in the court's decision in allowing encl. 103. The applicant did not object for the trial of the action to be proceeded with despite the fact that the decision on encl. 152 had yet to be delivered at the material time. The applicant's stance seemed to be incompatible with the applicant's insistence that the respondents must purge their contempt before being heard as the applicant knew very well that the first respondent would be giving evidence at the trial. If the stay was not granted and the contempt proceedings proceeded with, the trial of the action was likely to be derailed. On the other hand, the very issue, *ie*, whether the applicant had unfettered right to use the access road, would be put to rest at the conclusion of the trial. Given that the trial was already scheduled on 29 November 2021, the balance of convenience tilted in favour of granting the stay. (paras 36, 38, 40 & 42-44)

Case(s) referred to:

Gartner Research & Advisory (Malaysia) Sdn Bhd v. Industrial Court Of Malaysia & Anor [2020] 1 LNS 654 HC ***(foll)***

Jagdis Singh Banta Singh v. Outlet Rank (M) Sdn Bhd [2013] 3 CLJ 47 CA ***(refd)***

Knight v. Clifton [1971] Ch 700 ***(refd)***

Ling Peek Hoe & Anor v. Golden Star & Ors [2020] 9 CLJ 601 CA ***(refd)***

A *Perfect Oil Resources (Sabah) Sdn Bhd v. Ladang Sri Harapan (Sabah) Sdn Bhd [2021] 1 LNS 716 HC* ***(refd)***

Shamala Sathiyaseelan v. Dr Jeyaganesh C Mogarajah & Anor [2011] 1 CLJ 568 FC ***(dist)***

Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(dist)***

B **Legislation referred to:**

Rules of Court 2012, O. 1A, O. 2 r. 3, O. 41 r. 12

For the applicant - Edwin Tsen & Caroline Hee; M/s Tan Pang Tsen & Co
For the respondents - Norbert Yapp; M/s Norbert Yapp & Assocs

C *Reported by S Barathi*

JUDGMENT
(encl. 152)

Celestina Stuel Galid J:

D **Introduction**

The Application

[1] Enclosure 152 was an application by the first and second respondents (hereinafter referred to as "the respondents" unless specifically stated E otherwise) for the hearing of the *inter partes* committal proceedings on 30 August 2021 under encl. 96 made by the applicant pursuant to the leave granted dated 15 January 2021 by this court be stayed pending the disposal of the respondents' notice of motion for leave to appeal to the Federal Court.

[2] On 30 November 2021, this court allowed encl. 152 with costs in the F cause. The applicant has filed a notice of appeal against this court's said decision. I now provide my grounds thereto.

The Parties

[3] The applicant and the second respondent were set up by one Lee Poh G Sin ("the deceased") and are family-related businesses.

[4] The deceased was survived by his wife and two children, the first respondent and a son, Lee Kai Wuen ("LKW").

[5] Both the first respondent and LKW were shareholders of the applicant H and the second respondent at the material time. They were also directors of the second respondent whereas LKW was also a director of the applicant.

The Subject Matter Of The Dispute

[6] The applicant sued the second respondent to claim that it had "unfettered" use of the access road running through the land held under title I deed No. CL 085337515 which was registered in the second respondent's name ("the second respondent's land").

[7] According to the applicant, it had been using the said road since before the second respondent's land was acquired with the consent of its previous owner. The deceased had in his lifetime bought the second respondent's land, *inter alia*, to allow the applicant unfettered use of the said road and the applicant had continued to do so until in August 2019 when the second respondent through the first respondent prevented, obstructed or prohibited the applicant from doing so.

The Applicant's Action

[8] The applicant claimed that the second respondent's refusal to allow the applicant access to the said road caused it to suffer loss and damages as it could not deliver the fresh fruit bunch ("FFB") from its plantation and the stones from its quarry to its customers.

[9] The applicant, *inter alia*, prayed for a declaration that the applicant is entitled to the unfettered use of the subject road through the second respondent's land and an interim injunction against the second respondent whether by itself or by its servants and/or agents or howsoever and in whatsoever capacity from interfering with in whatsoever manner, whether by blockage, interference, interruption or other obstruction by whatsoever means, mode or manner or structure, the applicant's right of unfettered access to use the subject road through the second respondent's land, until such time this action was finally disposed of by the court.

Background Facts Leading To The Present Application

[10] On 4 September 2020, this court had granted the applicant the following order (hereinafter referred to as "the injunction order"):

> An interim injunction against the Defendant whether by itself or by its servants and/or agents or howsoever and in whatsoever capacity from interfering with in whatsoever manner, whether by blockage, interference, interruption or other obstruction by whatsoever means, mode or manner or structure, the Plaintiff's right of unfettered access to use the said access road through CL 085337515, until such time this action is finally disposed of by the court.

[11] By an *ex parte* notice of application dated 16 December 2020 (encl. 80), the applicant applied for leave for an order of committal against the second respondent and the first respondent as its director and the managing director for non-compliance of the injunction order namely for allegedly refusing to permit the applicant unfettered use of the said road without any reasons or sufficient reasons at all and for allegedly interfering with the applicant's use of the same.

[12] On 15 January 2021, this court granted the applicant's *ex parte* application ("the leave order").

[13] By encl. 103, the first and second respondents applied to set aside the leave order. The application was granted by this court on 19 April 2021.

[14] The applicant appealed against the court's decision on encl. 103 and on 27 July 2021, the Court of Appeal allowed the applicant's appeal.

[15] On 6 August 2021, the respondents filed a notice of motion for leave to appeal to the Federal Court against the Court of Appeal's decision on the following questions of law:

(a) whether in light of the Federal Court decision in *Shamala Sathiyaseelan v. Dr Jeyaganesh C Mogarajah & Anor* [2011] 1 CLJ 568 it is still mandatory for an alleged contemnor to purge his contempt before he can be heard on his application to set aside the leave order;

(b) whether an alleged contemnor is entitled to apply to the Court to set aside an *ex parte* leave order granted under O. 52 r. 2(2) of the Rules of Court prior to the hearing of the *inter partes* committal proceedings; and

(c) whether non-disclosure of material facts during leave stage would render the *ex parte* leave order a nullity in law or fatal to the leave application.

[16] Enclosure 152 was filed on 23 August 2021.

Preliminary Issues

[17] The applicant had raised a couple of preliminary issues in opposing encl. 152.

First Preliminary Issue – Whether The Respondents Were Not To Be Heard Until And Unless They Have Purged Their Contempt

[18] The applicant cited the Supreme Court case of *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210 to contend that the respondents ought not to be heard in this application as they had yet to purge their contempt.

[19] In that case, the respondents obtained an *ex parte* interlocutory injunction against the appellants. The respondents claimed that the appellants breached the injunction and obtained leave *ex parte* to issue proceedings against the appellants to commit them to prison for their contempt. The appellants filed an application to set aside the injunction and when the application came up for hearing the respondents objected contending that the contempt proceedings should be heard first. The trial judge ruled that he

would hear the contempt proceedings first and having disposed of it, would then deal with the appellant's application to set aside the injunction. The appellants being dissatisfied with the ruling appealed.

[20] In affirming the decision of the High Court, the Supreme Court held as follows:

> It is established law that a person against whom an order of Court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of Court runs the risk of being held in contempt with all its attendant consequences.
>
> It has not been seriously disputed and indeed we find that it is also an established general rule of law that a party in contempt cannot be heard further in the same proceedings for his own benefit unless and until he has purged his contempt.
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> ...
>
> Where the litigant shows himself to have little or no regard to an order issued against him, then he has to an extent, forfeited his right to be heard or at least postponed that right until he has suitably purged his contempt.
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> In the appeals before us, leave to issue committal proceedings has been granted. This means that the learned High Court Judge has accepted that there was a *prima facie* case for contempt against the appellants. It may well be that on the hearing of the Motion proper, the appellants will be acquitted of any charge of contempt. However, for purposes of the present appeals, the allegations of contempt are supported by the order for leave. In *Instituto Bancario San Paolo Di Torina SPA* (*supra*), there appears to have only been an allegation of contempt without any more. Here, there is a finding of *prima facie* contempt which cannot be ignored.

[21] The applicant also cited the Federal Court case of *Shamala Sathiyaseelan v. Dr Jeyaganesh C Mogarajah & Anor* [2011] 1 CLJ 568; [2011] 2 MLJ 281 where the court has referred to *Wee Choo Keong*, allowed the preliminary objection by the respondent that the applicant who had not purged her contempt should not be allowed to prosecute her appeals.

[22] It was submitted that likewise, the respondents in the present case had yet to purge their contempt of the injunction order and thus, ought not to be heard on their application.

[23] The respondents, on the other hand, cited the Court of Appeal case of *Ling Peek Hoe & Anor v. Golden Star & Ors* [2020] 9 CLJ 601 to contend that the granting of leave (to commence committal proceedings) does not amount to a finding of contempt and that it is merely an *ex parte* vetting process to consider whether there is a *prima facie* case of contempt.

[24] In answer, the applicant distinguished *Ling Peek Hoe* solely on the ground that the Court of Appeal did not go into the merits on the issue. In addition, the applicant directed the court's attention to the fact that the Court of Appeal had also relied on the case of *Wee Choo Keong* to say that that is the law to be applied.

[25] It was of significance to this court that the applicant had steered clear of addressing the submissions by learned counsel for the respondents on the observation by Richard Malanjum CJSS (as he then was) in *Shamala*'s case where His Lordship having considered *Wee Choo Keong* held that the Supreme Court did not adopt a "rigid position" that a person in contempt should not be heard.

[26] His Lordship had stated as follows:

> [25] Learned counsel for the wife submitted that *Wee Choo Keong* case stated the law wrongly when it said that 'there are no exceptions to the general rule' and as such it should not be followed. Learned counsel proffered that the new test is whether 'in the circumstances of an individual case the interests of justice would be best served by hearing the party' who is in contempt.
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> [26] In view of what was submitted I took the liberty of reading carefully the judgment of the then Supreme Court in *Wee Choo Keong* case.
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> [27] In that case the appellants (Wee and another) had appealed against the decision of the trial court to hear first the substantive motion of the respondents to commit the appellants to prison for contempt of court alleging that the appellants had breached the *ex parte* injunction obtained by the respondents earlier on.
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> [28] In dismissing the appeal the court said this, *inter alia*, at p. 221:
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> > It has not been seriously disputed and indeed we find that it is also an established general rule of law that a party in contempt cannot be heard further in the same proceedings for his own benefit unless and until he has purged his contempt. The question which we have to determine in these appeals is the ambit of that general rule.
> >
> > ...
> >
> > We are unable to accept that any exceptions *per se* exist to the general rule that a party in contempt cannot be heard until he has purged his contempt. *We are in favour of the views expressed by Denning LJ in Hadkinson v. Hadkinson [1952] 2 All ER 567 that it is a matter of discretion depending on the circumstances of the case whether or not a litigant ought to be heard notwithstanding his contempt. This flexible approach to the jurisdiction is based upon a discretion to be exercised in accordance with the circumstances of the case which was accepted by the House of Lords in X Ltd v. Morgan-Grampian (Publishers) Ltd and others [1991] 1 AC 1 ... The rationale for the rule is public policy.* Orders of court must be treated with respect and require strict obedience.

...

In this regard, we are mindful of the competing public interest in a litigant having a right to be heard. Although the right to be heard is a fundamental right vested in all litigants, that right however cannot be taken as an absolute right. Where the litigant shows himself to have little or no regard to an order issued against him, then he has to an extent, forfeited his right to be heard or at least postponed that right until he has suitably purged his contempt.

In this context, we are more inclined to accept the view expressed by Young J in *Young v. Jackman* (1986) 7 NSWLR 97 where he said: 'Accordingly, it would seem from 1820 onwards that the rule that a person will not be heard when he is guilty of contempt extended as well to the case where a party was considered to be in contempt, that is, where his contempt had *prima facie* been demonstrated to the court or alternatively when he had confessed the facts which were the subject of a charge of contempt. (emphasis added)

[27] His Lordship then concluded his opinion by stating as follows:

[29] **Having therefore carefully considered what was said by the then Supreme Court I do not think the court adopted, as portrayed, a rigid position 'that a person in contempt should not be heard'.** It is obvious from the judgment that in coming to its decision the court was well appraised of the views expressed by the learned judges in *Hadkinson v. Hadkinson* [1952] 2 All ER 567.

[30] No doubt the court said that it could not 'accept that any exceptions per se exist to the general rule that a party in contempt cannot be heard until he has purged his contempt'. But that was because it had already taken preference of the view expressed by Denning LJ to that of Romer LJ and Somervell LJ. (emphasis added)

[28] *Shamala*'s case was decided on its own facts, but it was clear from His Lordship's judgment that it is not the case that the court is bound not to hear the alleged contemnor merely or solely on the ground that he or she has not purged his or her contempt.

[29] That seemed to be the position of the applicant here *ie*, that the respondents ought not to be heard but as noted above, they had not by their submissions, convinced this court as to why this court ought not to rely on the judgment by Richard Malanjum CJSS referred to above.

[30] Now, having said all of the above, this court did take note that the Court of Appeal has reversed this court's decision on encl. 103, however, that was the whole premise of the stay application *ie*, the respondents were seeking leave to appeal to the Federal Court in respect of that decision. In

addition, there is no grounds of judgment from the Court of Appeal available as at the hearing of encl. 152, with the greatest of respect, it was not immediately apparent if this court's reliance on His Lordship Richard Malanjum's clear statement of the law in its decision on encl. 103 was the error that was said to have been appealable.

The Second Preliminary Issue – Defective Affidavit?

[31] The applicant had contended that the respondents' affidavits (encls. 153 and 165) which were sworn outside of jurisdiction were in breach of O. 41 r. 12 of the Rules of Court 2012 as they have failed to produce proof of seal or signature of the notary public before whom the affidavits were affirmed.

[32] Order 41 r. 12 of the Rules of Court 2012 reads as follows:

> **12. Affidavit taken outside Malaysia admissible without proof of seal**
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> A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, notary public or person having authority to administer oaths in a Commonwealth country and in the case of any other country the seal or signature of a consular officer of a Commonwealth country in testimony of an affidavit being taken before it or him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that Court, Judge, notary public or person.

[33] A similar objection was raised in *Gartner Research & Advisory (Malaysia) Sdn Bhd v. Industrial Court Of Malaysia & Anor* [2020] 1 LNS 654; [2020] MLJU 730. His Lordship Nordin bin Hassan J (now JCA) held that the absence of a notarial certificate accompanying the said affidavit when it was filed and served as a technical defect which was curable under O. 1A of the Rules of Court 2012. Further, the court had regard to O. 2 r. 3 and stated that the technical defect did not occasion any miscarriage of justice or had prejudicial effect on the second respondent. The court also cited the Court of Appeal case of *Jagdis Singh Banta Singh v. Outlet Rank (M) Sdn Bhd* [2013] 3 CLJ 47, which was also referred to by the respondents herein where the Court of Appeal had stated as follows:

> Rule(s) of procedure should not be taken as a game of skill in which one oversight by counsel shall be decisive to be outcome of the case. The purpose of procedure is to facilitate a proper decision on the merits.

[34] There being no allegation of any miscarriage of justice or prejudicial effect on the applicant, I was of the view that the objection was not sustainable. The fact that the applicant was able to respond to the said affidavits meant that such defects as alleged could not be said to be fatal.

On The Merits Of The Application

[35] I had earlier on alluded to the fact that the respondents were seeking leave to appeal to the Federal Court against the Court of Appeal's decision on encl. 103. Foremost to be considered would be the effect of the contempt proceedings, if allowed, on the respondents, bearing in mind the penal consequences which may come with it. As stated by Russel LJ in *Knight v. Clifton* [1971] Ch 700:

> Contempt of court, even of the type that consists in breach of an injunction or undertaking, is something that may carry penal consequences, even loss of liberty, and the evidence required to establish it must be appropriately cogent.

[36] There were merits in the submissions by the respondents that if their leave application before the Federal Court was allowed and the appeal was further allowed by the Federal Court, it would be rendered nugatory if the stay was not granted.

[37] I did take note of the contentions by the applicant that the respondents' leave application and or appeal to the Federal Court was unlikely to succeed as the same arguments did not persuade the Court of Appeal. With respect, these contentions went to the merits of the appeal which were pending before the Federal Court.

[38] In fact, the scope of the injunction order *ie*, whether it included the right of third parties (other than the applicant's own vehicles and drivers) to use the access road, which was also raised by the applicant to contend that they would be prejudiced by the grant of the stay, was the tilting point in the court's decision in allowing encl. 103 – see *Perfect Oil Resources (Sabah) Sdn Bhd v. Ladang Sri Harapan (Sabah) Sdn Bhd* [2021] 1 LNS 716 at paras. [20] to [29].

[39] After making a finding that the applicant had not made full and frank disclosure in obtaining the leave order, this court had stated as follows:

> 29. The omission was deliberate as, if disclosed, it would have shown that the Applicants' (Respondents herein) objections were premised on the Respondent's (Applicant herein) insistence on the Applicants' granting access by those in the said list contrary to the terms of the Injunction Order which did not specify so – see exhibits "14" & "15". Thus, the Applicants could not be said to have flagrantly disobeyed the Injunction Order. There was merit to the submission by learned counsel for the Applicants that these exhibits would have had a bearing on the Court's conclusion as to whether the Applicants were wilfully ignoring the terms of the Injunction Order.

> **Had this been disclosed, the Court could not and certainly would not have come to a conclusion that a *prima facie* contempt had been made out**, bearing in mind that the threshold is beyond reasonable doubt. (emphasis added)

[40] In addition, in considering the rights of the applicant if the contempt proceedings had stayed, it was significant to this court that the applicant did not object for the trial of the action to be proceeded with on 29 November 2021 despite the fact that the decision on encl. 152 had yet to be delivered at the material time.

[41] This court had, at the case management for the trial on 1 November 2021, expressly inquired from learned counsel for the applicant on this issue to which she confirmed that they wished for the trial to be proceeded with as "it was a separate matter".

[42] Notwithstanding that the earlier decision date for encl. 152 on 15 November 2021 was later rescheduled, the fact of the matter was that the applicant's stance seemed to be incompatible with the applicant's insistence that the respondents must purge their contempt before being heard as the applicant knew very well that the first respondent would be giving evidence at the trial.

[43] Further, I was of the view that if the stay was not granted and the contempt proceedings proceeded with, the trial of the action was likely to be derailed. On the other hand, the very issue *ie*, of whether the applicant had the right to unfettered use of the access road would be put to rest at the conclusion of the trial. Given that the trial was already scheduled on 29 November 2021, I was therefore of the view that the balance of convenience tilted in favour of granting the stay.

[44] In the premises, encl. 152 was allowed with costs in the cause.